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Top 10 Hits of Legal Issues in Special Education
2017 Year in Review

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Andrew F. & FAPE



Andrew F. & FAPE

- Parents of an autistic 5th grader with escalating behavioral problems complained that the district included almost identical goals in his IEPs for 2nd, 3rd, and 4th grade years.
- The child was not participating in a general education setting and was not performing at grade level (unlike student in *Rowley*).
- So in this child's case, what does FAPE mean?

Andrew F. by Joseph F. v. Douglas County Sch. Dist. RE-1,
69 IDELR 174 (U.S. 2017)

Andrew F. & FAPE

- In the 10th Circuit, the standard for FAPE had been “merely more than de minimus” progress.
- Andrew's parents argued that FAPE amounts to “opportunities to achieve academic success, attain self-sufficiency, and contribute to society” equal to those available to non-disabled students.

Andrew F. by Joseph F. v. Douglas County Sch. Dist. RE-1,
69 IDELR 174 (U.S. 2017)

Andrew F. & FAPE

- The U.S. Supreme Court ruled in *Andrew F.* that a school must offer an IEP that is “**reasonably calculated to enable a child to make progress appropriate in light of the child’s unique circumstances.**”
- Court agreed with longstanding proposition that IDEA does not require an optimal, ideal, or potentially-maximizing education, but “barely more than de minimis” is too low compared to grade-to-grade advancement required for mainstreamed sped students
- Court also rejected parents’ proposed standard of “educational opportunities equal to those afforded to nondisabled individuals”

Andrew F. by Joseph F. v. Douglas County Sch. Dist. RE-1,
69 IDELR 174 (U.S. 2017)

Andrew F. & FAPE

- The IEP must be geared toward **progress**
 - “After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement”
 - “program must be appropriately ambitious”
- “**in light of child’s circumstances**”
 - Reflects the individualized nature of special education
 - *Circumstances?* -- Type of disability, severity, environmental issues, behavior, parent participation/cooperation, etc...

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